IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO. 776 OF1998**

WITH

CRIMINAL WRIT PETITION NO. 777 OF 1998

WITH

CRIMINAL WRIT PETITION NO. 778 OF 1998

WITH

CRIMINAL WRIT PETITION NO. 779 OF 1998

WITH

CRIMINAL WRIT PETITION NO. 780 OF 1998'

WITH

CRIMINAL WRIT PETITION NO. 781 OF 1998

Mr. Rajendra Kumar Agarwal )
Managing Director of Hanil Era )
Textiles Ltd., Vanivali Vilage )
Patal Ganga, Taluka Khalapur, )
District Raigad. ) Petitioner
(Oig. Accused)

Vs.

1. Mr. J.N. Pare, )
Deputy Director, Industrial )
Safety & Health (M.A.H.) Panvel.)

2. The State of Maharashtra ) .. Respondents

Mr. Santosh Shetty for the petitioner.
Mrs. M.H.Mhatre, APP, for the State.

**CORAM: J.H.BHATIA,J.**
**DATE : 15th June, 2007.**

**ORAL JUDGMENT:**

1. Heard Mr. Santosh Shetty, learned Counsel for the petitioner and Mrs. Mhatre, APP, for the State.

2. The petitioner - Rajendra Kumar Agarwal, is the Chairman and Managing Director of M/s. Hanil Era Textiles Ltd. located at Vanivali Village, Patal Ganga, Taluka Khalapur, District Raigad. Respondent No.1 - J.N. Pare was, at the relevant time, the Deputy Director, Industrial Safety and Health, Panvel. Respondent No.1 visited the factory premises of Hanil Era Textiles Ltd. on 1.8.1995 and found contravention of several provisions of the Factories Act and the rules thereunder. For different contraventions, separate complaints were lodged by him and on the basis of the same, Criminal Case Nos.867, 868, 869, 870, 871 and 872

of 1995 were registered and in all these matters, processes were issued against the petitioner in this capacity as occupier of the said factory.

3. Being aggrieved by the same, he preferred a group of Writ Petitions challenging issuance of process and registration of criminal cases against him. He sought to quash the proceedings of those criminal cases. According to him as per the provisions of section 2(n) of the Factories Act, "occupier" of a factory has ultimate control over the affairs of the factory. According to him, as per the provisions of Section 7(1) of the said Act, one Mr. O.P.Rupramka, the then Managing Director of the Company, was nominated as occupier of the factory by Resolution dated 25.2.1994 and notice of the same was given to the authorities under the factories Act. Mr. Rupramka continued to be the occupier of the factory till 30.9.95 and as such on 1.8.95, when the respondent No.1 paid visit to the factory and found violation of certain rules, Mr. Rupramka was the occupier and in view of the provisions of law, he alone would be responsible for the contraventions of the rules and regulations under the Factories Act. In view of the fact that on the relevant date, Rupramka was the occupier, he shall be deemed to have ultimate control over the affairs of the factory. Merely because on the relevant date, the petitioner was

the Chairman of the Company, he could not be deemed to be occupier nor he would be personally responsible for any violation of breach of the rules. He contends that in view of this, the respondent No.1 committed wrong in filing complaints against him and the learned trial Court also committed mistake in issuing process against him. According to him, if the proceedings are not quashed, it will cause lot of inconvenience and he will have to unnecessarily face prosecution for the offences for which he cannot be held liable.

4. These petitions are opposed by the respondents by filing an affidavit of oneMs. Deorao Bhaduji Batki, who is the present Deputy Director, Industrial Safety and Health, Panvel. He has pointed that on 1.8.95,when the then Deputy Director i.e. respondent No.1 had paid visit to the factory and had undertaken inspection, he had come to know that the notified occupier of the factory, Shri O.P.Rupramka and the notified Manager, Shri B.S.Kushwaha, were not working with the company and no fresh appointment was made on the vacant post of O.P.Rupramka who had resigned from the post of Managing Director and had also ceased to be the Director with effect from 4.7.95. It is contended that on 3.8.1995, the respondent No.1 had issued a show cause notice to the petitioner, as the notified occupier of the company had retired and no fresh appointment was made on the

vacant post. That notice was not replied by the petitioner. He also contended that on 6.1.95, B.S.Kushwaha, Personnel Manager of the factory had sent Stability Certificate of the factory to the respondent No.1 wherein name of present petitioner, R.K.Agarwal was shown as occupier of the factory.

5. The learned Counsel for the parties have taken me through the relevant documents and record. Admittedly, the petitioner was the Chairman of Hanil Era Textiles Ltd. Mr. O.P.Rupramka was the Managing Director of the company and was also notified as occupier under Section 7 as per resolution dated 25.2.1994. The extract of the resolution passed at the meeting of the Board of Directors of the company held on 30.9.95 at Mumbai reveals that the present petitioner as the Chairman of the Company informed the Board that the Managing Director, Mr. O.P.Rupramka had resigned from the post due to the family problems and his resignation letter dated 4.7.95 was tabled by the Chairman which had been accepted by the Chairman, R.K.Agarwal. Of course, in the next sentence, it is stated that Mr.R.K. Agarwal informed the Board that Mr. Rupramka will be relieved of his responsibilities with effect from 30th September, 1995 and accordingly, he requested the Board to accept his resignation. In the earlier sentence, it was clearly mentioned that his resignation letter dated

4.7.1995 had been accepted by the Chairman. It means the petitioner, as the Chairman of the company, had already accepted resignation dated 4.7.95 submitted by Mr. Rupramka. In the reply affidavit filed by Mr. Batki, Deputy Director, Industrial Safety and Health, it is mentioned that on 1.8.95, when the company was inspected by respondent No.1, he had come to know that the notified occupier O.P.Rupramka and notified Manager B.S.Kushwaha were not working with the company and no fresh appointment on the vacant post was made after resignation of Rupramka on 4.7.95. This affidavit finds corroboration from the contents of the resolution passed by the company on 30.9.95.

6. Besides this, on 6.1.1995, B.S.Kushwaha, Personnel Manager had submitted a Certificate of Stability of the company to the Deputy Director with his covering letter dated 6.1.1995. The Certificate of Stability was issued by Bhagwati Designs Pvt.Ltd., Consulting Engineers & Architects in Form No.IA about Hanil Era Textiles Ltd. The Certificate of Stability issued in Form No.IA, under Rule 3A clearly shows that Mr. R.K.Agarwal, Chairman of the Company, was the occupier of the factory.

7. The petitioner has not produced any document to show that after 4th July, 1995, on resignation of Mr.

Rupramka, the company had notified any other person as occupier of the company under Section 7 of the Factories Act. In view of this, prima facie, it appears that Rupramka was not the occupier of the factory on 1.8.1995 when the company was inspected by the respondent No.1. As no other person was notified as occupier under Section 7, any director of the company could be held to be occupier of the factory. As the petitioner was the Chairman and the head of the Board of Directors, he could be held responsible as occupier. It is further stated in the certificate of stability submitted to the Deputy Director by the Personnel Manager with his covering letter dated 6.1.95 that the Petitioner was occupier of the factory. It reveals that even though in February, 1994, Mr. O.P.Rupramka was notified to be the occupier, on 6.1.95, the present petitioner was the actual occupier of the factory. In view of this documentary evidence, prima facie, it cannot be held that the respondent No.1 had wrongly prosecuted the petitioner and that the trial Court had committed any wrong in issuing process against the petitioner. It may be noted that this is the question of fact which can be looked into at the time of trial of cases. Therefore, taking into consideration the documents and other material on record, I find no substance in the Petitions.

8. In the result, all these Writ Petitions stand dismissed. Rule discharged.

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**(J.H.BHATIA,J.)**